

APPROVED BY THE COMMISSION- JANUARY 19, 1999

W. STEVENS, HEARING OFFICER

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

)

COMMONWEALTH GAS COMPANY) D.T.E. 98-92

PRE-APPROVAL OF DEMAND-SIDE)

MANAGEMENT PROGRAMS)

_____)

AMENDED SETTLEMENT AGREEMENT

Commonwealth Gas Company ("Commonwealth" or "Company"), Settlement Intervention Staff ("SIS") appointed by the Department of Telecommunications and Energy (the "Department"), the Division of Energy Resources ("DOER"), Action, Inc. ("Action"), South Middlesex Opportunity Council ("SMOC"), Citizens for Citizens ("CFC"), South Shore Community Action Council ("SSCAC"), Worcester Community Action Council ("WCAC"), Housing Assistance Corp. ("HAC"), Massachusetts Energy Directors Association ("Energy Directors") and Massachusetts Community Action Association ("CAP Directors") hereby agree, as provided herein and subject to approval of the Department, to resolve all issues relating to Commonwealth's request for pre-approval of residential and commercial and industrial ("C&I") conservation and load

management programs (also referred to as "demand-side management programs" or "DSM programs"). Commonwealth, SIS, DOER, Action, SMOC, CFC, SSCAC, WCAC, HAC, the Energy Directors and the CAP Directors are collectively referred to as the "Settling Parties." ⁽¹⁾

I. BACKGROUND

Commonwealth's residential DSM programs were originally established pursuant to the Department's Order in Commonwealth Gas Company, D.P.U. 91-60 Phase II (1992) (as modified in Commonwealth Gas Company, D.P.U. 93-139 (1993)). These residential DSM programs were extended for an additional twelve-month period running from November 1, 1994 through October 31, 1995 as a result of the Settlement Agreement approved in Commonwealth Gas Company, D.P.U. 94-128 (November 23, 1994) (the "D.P.U. 94-128 Settlement"), and were further extended (with certain modifications) on an interim basis as a result of the Department's Letter Order dated October 26, 1995 approving the Company's Motion for Interim Continuation of Existing DSM Programs (the "Interim Motion"). The Company subsequently offered residential DSM programs, as well as new C&I programs, for a thirty-six month pre-approval period ending October 31, 1998, pursuant to the Settlement Agreement approved in Commonwealth Gas Company, D.P.U. 95-114 (September 19, 1996) (the "D.P.U. 95-114 Settlement"). Pursuant to the Company's Motion for Interim Continuation of Certain Existing DSM Programs approved in this docket, D.T.E. 98-92, on October 28, 1998, the Company currently: (a) is continuing the residential DSM programs approved in the D.P.U. 95-114 Settlement; (b) is continuing the market transformation initiatives for residential and C&I customers approved in the D.P.U. 95-114 Settlement; and (c) has suspended new C&I rebate-based program activity pending a final decision in this proceeding.

The Company's pre-approval request in D.T.E. 98-92 was made by means of the filing of an Initial Petition along with detailed supporting testimony and materials on September 15, 1998 (the "September 15, 1998 Filing"). Said filing provided the information required for DSM program extensions as set forth by the Department in the proceedings in Colonial Gas Company, D.P.U. 94-105 (1994), as well as the general information required by the Department for the pre-approval of DSM programs. See generally Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 89-242/246/247 (1990). By the Department's Order of Notice dated October 6, 1998, a deadline of October 20, 1998 was set for petitions seeking intervention or participation and a public hearing was scheduled for October 27, 1998. Other than SIS, which was appointed by the Department on October 21, 1998, DOER, and the Low-Income Intervenors were the only parties to have sought intervention or participation in the proceedings. After the public hearing on October 27, 1998, the Settling Parties had several discussions. The Settling Parties have now reached this Settlement for which they seek the Department's approval. In reaching this Settlement, the Settling Parties seek to allow for the continuation and enhancement of the Company's DSM efforts in a manner that responds to the needs of all of the Company's customers, including hard-to-reach low-income customers, that increases the efficiency of gas used in the Company's service territory, and that is appropriate to the increasingly competitive natural gas marketplace. The Settling Parties anticipate that energy efficiency initiatives will continue to serve an important role as the gas marketplace evolves, but this Settlement only addresses the Pre-approval Period (as defined below).

II. TERMS OF SETTLEMENT

A. Residential DSM Programs. The Company's proposed residential One-Stop DSM Program and residential Low-Income Program as set forth in the Company's September 15, 1998 Filing are approved for operation during the twelve-month period commencing November 1, 1998 and ending October 31, 1999 (the "Pre-approval Period"). In order to implement the Low-Income Program, the Company will continue to coordinate its efforts with the non-profit, weatherization assistance program agencies in its service territories. The Settling Parties have updated the cost-effectiveness screening of the Low-Income Program that was originally presented in Exhibit EJS-8 of the September 15, 1998 Filing based upon further review of applicable data and savings results. The updated cost-effectiveness screening is included in Exhibit 1 hereto and demonstrates a benefit cost ratio of at least 1.08 for said Low-Income Program. Relatedly, the Settling Parties have agreed to the following modifications to the Low-Income Program for the Pre-

Approval Period: (1) the Company along with the non-profit, weatherization assistance program agencies in its service territories will operate a pilot, joint gas and electric energy efficiency outreach program with a budget of \$50,000 for the Pre-Approval Period; and (2) administration of the Low-Income Program during the remainder of the Pre-Approval Period following submission of this Settlement Agreement shall be modified such that the non-profit, weatherization assistance program agencies in the Company's service territories shall be responsible for the post-installation field inspections for the Program and such that payments to contractors for the Program shall be made (after the furnishing of applicable invoices and any requisite supporting information) directly from the Company to the Contractor in lieu of the current practice of having such payments made by the Company's administrative vendor. The updated budget for the above-described Low-Income Program is set forth in Attachment A.

On or before November 1, 1999, the Company will file a report with the Department and the Settling Parties describing the Company's experience to date with its residential DSM programs, including a discussion of the levels of savings (to the extent determinable), marketing efforts, participation and spending for such programs and whether the Company plans to allocate or reallocate funds to measures/programs it deems to be more beneficial to customers in accordance with this Section II. The total amount of expenditures which are pre-approved as recoverable for the Pre-approval Period for the Company's residential DSM programs, including the market transformation initiatives described in Section II.C. below, shall be \$2,544,900. A summary of these expenditures, along with a statement of the savings and participation goals for each of the residential programs agreed upon by the Settling Parties, is included in Attachment A.

B. C&I DSM Programs. The Company's proposed ramp-down and termination of its C&I Business Opportunities Program and Medium/Large C&I Facilitation Program as described in the September 15, 1998 Filing are approved. The total amount of expenditures which are pre-approved as recoverable for the Pre-approval Period for the Company's C&I DSM effort, including the above referenced ramp-down of existing programs and the market transformation initiatives described in Section II.C below, shall be \$359,100. A summary of these expenditures, along with a statement of the savings and participation goals for the C&I programs, is included in Attachment A.

C. Market Transformation Initiatives. The Settling Parties agree that the Company's residential and C&I DSM programs will assist in market transformation that can help "create long-term changes that reap continuous energy efficiency savings at low cost." Electric Industry Restructuring, D.P.U. 96-100, at 67 ("D.P.U. 96-100").⁽²⁾ The Settling Parties anticipate that utility-sponsored market transformation initiatives will continue to become more refined as the Pre-approval Period progresses. In addition, the Settling Parties recognize that the Department has endorsed market-driven energy efficiency initiatives that are designed to take advantage of "market opportunities for more efficient use of energy at a time when it is most practicable and inexpensive to do so, such as during new construction, renovation, equipment replacement or at the time of purchase of new equipment." Id.; see also Boston Gas Company, D.P.U. 94-109 (Phase II), at 6, Interim Order on Gas Demand Side Management (1996); Western Massachusetts Electric Company, D.P.U. 96-8-CC, at 7 (1996). In order to address these directives, during the Pre-approval Period, the Company will undertake the market transformation initiatives described in the September 15, 1998 Filing, which include, without limitation, sponsoring the residential high efficiency equipment heating rebate program developed by the Massachusetts Natural Gas DSM/Market Transformation Collaborative (the "Collaborative"), the Collaborative's regional education and training efforts, and, when and if cost-effectively developed, the Collaborative's residential hot water and C&I equipment rebate efforts. The Company has developed a cost-effectiveness analysis for the presently offered rebate-based elements of the Company's market transformation effort (*i.e.*, residential heating system rebates) which demonstrates the cost-effectiveness of such efforts. Such analysis is included in Exhibit 1.

The Company further commits to the following additional market transformation efforts: (1) continuing to participate in the Collaborative during the Pre-approval Period; and (2) submitting a baseline study (either individually or jointly with other members of the Collaborative) during the Pre-Approval Period for use in pursuing market transformation initiatives.

In the event the Company undertakes incremental market transformation initiatives beyond those set forth herein, it shall have the right, without the need for further pre-approval, to reallocate up to sixty (60%) percent of the annual budget for the One-Stop DSM Program to such new initiatives. Nothing in the foregoing shall preclude the Company from expending additional funds as is expressly allowed in Paragraph II.F. below. The Company's decision to make an incremental expenditure and/or to reallocate its budget as provided in this Paragraph II.C shall be based on the justification that incremental expenditure and/or reallocation is in the best interest of the Company's DSM programs and the Company's customers. Provided, however, that any such reallocation involving more than sixty (60%) percent of the applicable program budget shall require the approval of the Department.

While it is appropriate to develop cost-effectiveness analyses when practicable for market transformation efforts,⁽³⁾ the Settling Parties agree that not all aspects of the Company's market transformation effort can be evaluated using a traditional DSM cost-effectiveness analysis. In particular, the general educational, training and research efforts described in the September 15, 1998 Filing are not, at this time, appropriately suited to such an analysis. The Settling Parties agree, however, that implementation of such market transformation initiatives are in the best interests of the Company's customers because of the benefits available in terms of: 1) market transformation; 2) quality of service provided to customers; 3) increased customer satisfaction and awareness; 4) the potential effect on customer productivity and competitiveness; 5) the potential for these efforts to further economic development within the Commonwealth of Massachusetts; and 6) the potential long- and short-term environmental benefits associated with the implementation of the market transformation/market-driven energy efficiency initiatives. See Cambridge Electric Light Company/Commonwealth Electric Company, D.P.U. 95-95 Settlement at 5; see also D.P.U. 95-114 Settlement at 12. The narrative discussion of Fiscal Year 1998 market transformation efforts provided in Exhibit 2 further details the benefits of the Company's initiatives. The total amount of expenditures which are pre-approved as recoverable for the Pre-Approval Period for the Company's market transformation initiatives shall be \$576,980.⁽⁴⁾ A summary of these expenditures, along with a statement of participation goals for such market transformation programs, is included in Attachment A.

D. The Settling Parties agree that the implementation of the Company's residential and C&I DSM Programs, and the Company's market transformation initiatives will: result in benefits to all customers; reflect the particular circumstances of the Company and its customers; further the Department's objectives in terms of continuing market-driven DSM efforts in a more competitive environment; and continue the Company's current existing residential DSM effort, with the appropriate enhancements and flexibility described herein. The Settling Parties further agree that the DSM programs provided for in this Settlement serve important societal goals and directly respond to the policy goals of the Department and the DOER.

E. The Company has both the authority and the responsibility to monitor and evaluate, on an on-going basis, the effectiveness and cost-effectiveness of its programs, in particular after considering approved "GEMS" impact evaluation results.⁽⁵⁾ In this regard, the Company specifically commits to participating in any generic docket opened by the Department during the Pre-Approval Period in order to review and develop a standardized cost-effectiveness screening methodology to be used in evaluating the DSM programs of all Massachusetts local gas distribution companies. Based upon its ongoing review of cost-effectiveness of its programs, the Company may determine whether to reallocate monies away from DSM measures/programs set forth in Paragraphs II.A., II.B. and II.C. above, toward programs and measures that it deems are relatively more beneficial for customers. The Company's decision to reallocate its budget shall be based on the justification that reallocation is in the best interest of the Company's DSM programs and the Company's customers. Except for reallocations regarding market transformation initiatives (which are expressly provided for in Paragraph II.C.3 above), any such reallocation involving over thirty-five percent (35%) of the overall budget for either the residential DSM programs or the C&I DSM programs shall require the approval of the Department.

F. During the Pre-approval Period, the Company may expend, and seek recovery of, funds for its DSM programs, including market transformation/market-driven energy efficiency initiatives, in addition to the pre-approval amounts set forth in Paragraphs II.A., II.B. and II.C. above, if such additional expenditures are cost-effective or if, in its discretion, the Company determines that such additional expenditures are in the best interests of the Company's DSM programs and the Company's customers; provided, however, that the

other Settling Parties shall not be bound to support the recovery of such additional expenditures unless in their respective discretions, the Company has shown the cost-effectiveness or benefits of such additional expenditures.

G. Cost recovery, including recovery of lost margins and incentives, shall continue through the conservation charge ("CC") decimal mechanism as approved and found reasonable in the D.P.U. 94-128 Settlement and the D.P.U. 95-114 Settlement, with the specific adjustments described below. Specifically with respect to incentives to be earned for savings achieved during the Pre-Approval Period, effective for savings achieved after November 1, 1998, the Company shall terminate further recovery of the financial incentive of one percent (1%) of the actual net benefits derived from its One-Stop and Low-Income DSM programs approved in the D.P.U. 95-114 Settlement. The Company reserves the right to raise the issue of allowing for an incentive based upon net savings achieved after the Pre-Approval Period, in particular in the event the Department does not allow for continuing lost margin recovery in the ongoing generic proceeding in Colonial Gas Company, D.T.E. 97-112. The Company shall also be eligible for a maximum market transformation incentive of \$25,275 based upon achievement during the Pre-Approval Period of the performance milestones set forth in the update to Exhibit EJS-7 of the September 15, 1998 Filing, which is attached hereto as Exhibit 3.(6) Such maximum incentive equals seven and one-half percent (7.5%) of eligible market transformation expenditures as detailed in Exhibit 3. As detailed in Exhibit 3, such incentive plan is subject to a ratcheting mechanism such that accomplishment of between 65% and 85% of a given goal will enable the Company to receive 75% of the maximum incentive for that goal, while achievement of 86% or more of such goal will enable the Company to receive the maximum incentive for such goal. No incentive will be earned for an applicable goal if the Company achieves less than 65% of such goal. The Company will collect lost margins resulting from savings from its present and historically Operated One-Stop, Low-Income, Multi-Family and Business Opportunities DSM Programs, but, except as provided in the next sentence, will not collect lost margins for savings resulting from its market transformation initiatives described in Paragraph II.C. above or from its historically operated Medium/Large C&I DSM Facilitation Program. The Company shall be eligible for lost margin recovery based upon savings achieved from rebate-based high-efficiency equipment market transformation activities, including the currently offered residential heating system rebates, and, when and if cost-effectively developed, the planned residential water heating rebates and commercial/industrial equipment rebates. Additionally, the Company shall be bound, on a prospective basis only, by any generic lost margin recovery requirements generally applicable to all Massachusetts local gas distribution companies adopted in the ongoing proceeding Colonial Gas Company, D.T.E. 97-112.(7) Until such an Order is issued the Company shall be allowed to recover lost margins at the levels set forth in the September 15, 1998 Filing, with the modest adjustments described in Exhibit 4, which result from the increased savings agreed upon by the Settling Parties for the Company's Low-Income Program and the rebate-based high efficiency and market transformation initiatives planned for the Pre-Approval Period. Exhibit 4 also reflects certain minor adjustments for the CC decimals included in Exhibit 1 and Exhibit 2 of the September 15 filing to reflect actual data through October 31, 1998 and an adjustment of the \$7,102 incentive figure in Exhibit EJS-6, Page 2 of such September 15 Filing to the correct amount of \$6,854. Such CC decimal adjustments shall be reflected in the reconciling adjustment in the Company's first Local Distribution Access Charge filing following the Department's approval of this Settlement.

H. In the event that the Company files a comprehensive base rate or service unbundling case with the Department prior to the end of the Pre-approval Period, the Department shall have the right to order a review of the merits of continuing to proceed under the provisions of this Settlement (on a prospective, "going forward" basis) based upon the substance of any such filing by the Company. The Department shall not be required to order such a review, but may elect to do so in its discretion based upon the current circumstances at the time of any such comprehensive base rate or service unbundling filing. The Settling Parties agree that the DSM programs (including market transformation initiatives) provided for in this Settlement serve societal goals and respond to the policy goals of the Department and DOER. The Settling Parties also agree that such DSM programs are appropriately undertaken by the Company at this time in light of its current role in the increasingly more competitive natural gas industry. In no event will the implementation of these DSM efforts preclude or prevent the Company from developing or implementing any service unbundling plan (including the creation of affiliated or subsidiary companies, such as marketing affiliates); provided, however, that in the event any such service unbundling plan is implemented, the Settling Parties reserve the right to contend that such DSM programs should or

should not continue to be undertaken by the Company (on a prospective "going forward" basis), or that such DSM programs should or should not begin to be undertaken by a new affiliated or subsidiary company.

I. As specified in Section II.E above, the Company commits to participating in any generic cost-effectiveness screening docket opened by the Department during the Pre-Approval Period. The Company shall be bound, on a prospective basis only, by any such generic cost-effectiveness requirements generally applicable to all Massachusetts local gas distribution companies adopted in such a generic proceeding. Until such a generic Order is issued, the Company shall use the cost-effectiveness screening methodology utilized for this Settlement.

III. CONDITIONS OF SETTLEMENT

A. This Settlement shall not be deemed in any respect to constitute an admission by any party as to the merits of any allegation or contention in this proceeding. The making of this Settlement establishes no principles or precedent and shall not be deemed to foreclose any party from making any contention in any future proceeding, except as to those issues that are resolved by approval of this Settlement Agreement.

B. Other than as expressly stated herein, the acceptance of this Settlement shall not in any respect constitute a determination by the Department as to the merits of any allegations, contentions, or issues made in this or any subsequent proceeding.

C. This Settlement is expressly conditioned upon the Department's approval of all provisions herein, without change or condition, by no later than January 18, 1999.

D. The discussions (including workpapers, documents, etc. produced in connection therewith) which have produced this Settlement have been conducted with the explicit understanding that all offers of settlement and discussions relating thereto are and shall be privileged, and shall be without prejudice to the position of any party presenting such offer or participating in any such discussion, and are not to be used in any manner in connection with these or other proceedings involving any of the parties to this Settlement or otherwise.

E. This Settlement is submitted on the condition that, in the event the Department does not approve of it in its entirety, it shall be deemed withdrawn and void and shall not constitute any part of the record in this proceeding or be used for any other purpose.

F. This Settlement constitutes the entire agreement between the parties regarding the subject matter hereof. All previous agreements, discussions, communications, and correspondence regarding the subject matter hereof are superseded by the execution of this Settlement.

G. In support of this Settlement, the parties hereby move that all documents filed by the Company (including this Settlement Agreement, Attachment A and Exhibits 1-4) in this proceeding be admitted into the record of this proceeding.

COMMONWEALTH GAS COMPANY DEPARTMENT OF TELECOMMUNICATIONS

AND ENERGY

SETTLEMENT INTERVENTION STAFF

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Dated: As of January 11, 1999

Attachment A

Summary of Program Costs, Participation and Savings

Exhibit 1

**Updated Cost-Effectiveness Screening for the Residential and Low-Income Programs,
Including Rebate-Based Market Transformation Initiatives**

Exhibit 2

Narrative Discussion of FY-98 Market Transformation Initiatives

Exhibit 3

Updated Market Transformation Incentive Metrics

[Replaces Exhibit EJS-7 in September 15, 1998 Filing]

Exhibit 4

Updated Calculation of CC Decimals, including Lost Margin Recovery

1. 1 Action, SMOC, CFC, SSAC, WCAC, HAC, the Energy Directors and the Cap Directors are collectively referred to as the "Low-Income Invernenors."
2. 2 In D.P.U. 96-100, the Department defined market transformation initiatives to mean "strategic efforts to offset market failures and to induce lasting structural or behavioral changes that result in increases in the adoption or penetration of energy efficient technologies or practices."
3. 3 The Settling Parties have developed such a market transformation cost-effectiveness analysis for the rebate-based residential high-efficiency furnace and boiler equipment initiative. See Exhibit 2.
4. 4 Such \$576,980 figure does not include the \$262,310 figure for the rebate-based residential furnace/boiler effort which is separately stated as a line item on the budget in Attachment A.
5. 5 The term "GEMS" refers to the jointly sponsored Gas Evaluation and Monitoring Study, originally approved in Boston Gas Company, D.P.U. 90-320 (1992). GEMS results for Commonwealth were first approved on September 18, 1995 in the compliance phase of Boston Gas Company, D.P.U. 94-15 (1995).
6. 6 As described in the September 15, 1998 Filing, the Company can earn a reduced incentive based upon achievement of a portion of the milestones described in said Exhibit EJS-7.
7. 7 Such requirements shall be applied to the Company on a prospective basis, without requirement of any retroactive adjustment for lost margins earned during the Pre-Approval Period prior to any final decision in docket D.T.E. 97-112.